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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/070,576

08/27/2002

Peter Hillebrand De Haan

308.1001

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08/26/2004

MUSERLIAN, LUCAS AND MERCANTI, LLP  
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NEW YORK, NY 10016

EXAMINER

MILLER, ROSE MARY

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,576

Applicant(s)

DE HAAN ET AL.

Examiner

Rose M Miller

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 6-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-5 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

**DETAILED ACTION*****Election/Restrictions***

1. Applicant's Request for Reconsideration for Withdrawal of claims 6-16 has been considered but it has not changed the Examiner's stand. While in a National Stage Application, the Examiner in charge of the Application may make a Restriction or Election of Species requirement as long as the Lack of Invention Rules as Applicable to PCT's is followed. The specific division within a Restriction or Election of Species is based upon the Examiner's experience, expertise within the art, and desire to simplify an application by requesting an election in a Restriction/Election of Species (Restrictions and Election of Species are not required by the Office, therefore it is up to the Examiner in charge whether or not the requirement is made). Therefore, to argue that an Examiner in the International Stage did not require a Restriction or Lack of Unity or required a separate division within the claims or subject matter is not a proper argument in response to a Restriction or Election of Species Requirement in a National Stage.

A proper response is that the Species recited in the Election of Species are not patentably distinct from one another. As Applicant has not argued such and does admit to the presence of multiple "embodiments", the Election of Species requirement stands.

Therefore, the withdrawal of claims 6-16 as being directed to a non-elected species stands.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freud (US Patent 4,429, 343) in view of Applicant's admitted prior art (page 1, lines 1-15 and pag3 4 lines 10-14)

Freud teaches a moisture sensor having a thin metal film electrode deposited on a non-conducting substrate to form two sets of interdigitated fingers (electrical circuit, Figures 1 and 2, abstract). Freud does not teach the specific use of an ICP for detecting the moisture. However, it is known in the art to use a layer for detecting moisture as the ICP layer provides a change in electrical properties taught by Freud in the means to determine the presence of moisture.

As to claim 17, Applicant admits the moisture sensor has been used in baby diapers, incontinence diapers, mattress and/or incubator for detecting bodily fluid (page 1 lines 11-15).

#### ***Allowable Subject Matter***

5. Claims 2-5 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments, see page 7 of the Response, filed 27 May 2004, with respect to Claims 2, 3, and 18 have been fully considered and are persuasive. The 103 rejections of Claims 2, 3, and 18 have been withdrawn.

7. Applicant's arguments filed 27 May 2004 have been fully considered but they are not persuasive. Applicant's arguments against the rejections of claim 1 (as found on page 6 of Applicant's response filed 27 May 2004) are based on elements not found in the claims. For instance, Applicant argues the features of the individual polymers used in the prior art vs. Applicant's claimed polymer. Applicant readily admits that the polymer claimed changes electrical characteristics (specifically resistance) when in contact with moisture. One of ordinary skill in the art would recognize the significance of any change in electrical characteristics as a means of determining the presence of moisture, as one of ordinary skill in the art would know that a change in resistance is proportional or related to a change in capacitance should the polymer be so utilized. Freud specifically teaches using a polymer which changes electrical characteristics between the interdigitated electrodes of a moisture sensor. One of ordinary skill in the art would have known to use the polymer admitted by Applicant to react with moisture as a substitute for the moisture reactive polymer disclosed in Freud as both do the same function - change their electrical properties based upon the amount of moisture found in the polymer. That the polymer of Freud reacts differently than the claimed polymer is moot as the end result is the same - a change in electrical characteristics based upon the amount of moisture in the testing area.

As for Freud not specifically teaching the use of ICPs, Applicant is trying to argue the specifics of a single reference when it is the combination of the teachings that are relied upon for the rejection. Freud does not have to specifically use an ICP as Applicant readily admits to the use of ICPs for determining the presence of moisture. Therefore, the combination of the two

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teachings, Freud in view of Applicants admitted prior art, meets the claimed invention.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rose M Miller whose telephone number is 571-272-2199. The examiner can normally be reached on Monday - Thursday, 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

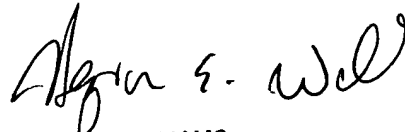
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RMM

18 August 2004



HEZRON WILLIAMS  
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